Ç	Case 3:08-cv-01536-JM-WMC Docume	nt 4 Filed 09/05/2008	Page 1 of 3		
1 2 3 4 5	GEORGE G. WEICKHARDT (SBN 58586) WENDY C. KROG (SBN 257010) ROPERS, MAJESKI, KOHN & BENTLEY 201 Spear Street, Suite 1000 San Francisco, CA 94105 Telephone: (415) 543-4800 Facsimile: (415) 972-6301 Email: gweickhardt@rmkb.com wkrog@rmkb.com				
6 7	Attorneys for Defendant CHASE BANK USA, N.A.				
8	UNITED STATES DISTRICT COURT				
9	FOR THE SOUTHERN DISTRICT OF CALIFORNIA				
10					
11	VIRGILIO ESCAMILLA,	CASE NO. 08 CV 1536 JM WMC			
12	Plaintiff,	DISMISS PURSUAN	NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.		
13	V.	12(b)(6) AND TO STI FED. R. CIV. P. 12(f)	12(b)(6) AND TO STRIKE PURSUANT TO FED. R. CIV. P. 12(f)		
14	CHASE BANK USA, N.A.,				
		<b>-</b> .	Date: October 17, 2008 Time: 1:30 p.m.		
15	and DOES 1 through 10, inclusive,	Time: 1:3			
15 16	and DOES 1 through 10, inclusive,  Defendants.	Time: 1:3 Courtroom: 16			
16 17		Time: 1:3 Courtroom: 16 Judge: The Hon. Je	0 p.m.		
16 17 18	Defendants.	Time: 1:3 Courtroom: 16 Judge: The Hon. Je	0 p.m. effrey T. Miller		
16 17 18 19	Defendants.  TO ALL PARTIES AND THEIR ATTO	Time: 1:3 Courtroom: 16 Judge: The Hon. Je  RNEYS OF RECORD: October 17, 2008, at the hou	O p.m.  effrey T. Miller  er of 1:30 p.m., in		
16 17 18	Defendants.  TO ALL PARTIES AND THEIR ATTO  PLEASE TAKE NOTICE that on	Time: 1:3 Courtroom: 16 Judge: The Hon. Je  RNEYS OF RECORD: October 17, 2008, at the hould located at 880 Front Street, Stree	of p.m.  of T. Miller  or of 1:30 p.m., in  San Diego, California		
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Ropers Majeski Kohn & Bentley A Professional Corporation San Francisco

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Chase moves to strike the billing statements attached as Exhibit B to plaintiff's complaint as well as any and all references to "billing statements" as follows on the grounds that billing statements are immaterial matter under Fed. R. Civ. P. 12(f) because the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.14 specifically exempts billing statements:

"CHASE knew it could no longer call, write, send Complaint, paragraph 23: billing statements, statements of account, or any other communication except legal process to the DOAN LAW FIRM, LLP."

Complaint, paragraph 25: "CHASE knew it could only call, write, send billing statements, and send statements of account, to the DOAN LAW FIRM, LLP."

Complaint, page 7 chart:

1	01/07/08	Billing Statement	Sent despite notice 1 (see above)	
2	01/25/08	Billing Statement	Sent despite notice 1	
3	02/07/08	Billing Statement	Sent despite notice 1	
4	02/15/08	Letter	Sent despite notice 1	
5	02/25/08	Billing Statement	Sent despite notice 1	
6	02/27/08	Letter	Sent despite notice 1	
7	03/01/08	Phone Call	Sent despite notice 1	
8	03/05/08	Letter	Sent despite notice 1	
9	03/11/08	Phone Call	Sent despite notice 1	
10	03/11/08	Phone Call	Sent despite notice 1	
11	03/11/08	Phone Call	Sent despite notice 1	
12	03/12/08	Phone Call	Sent despite notice 1	
13	03/18/08	Phone Call	Sent despite notice 1	
14	03/18/08	Phone Call	Sent despite notice 1	
15	04/13/08	Phone Call	Sent despite notice 1 and notice 2	
16	04/16/08	Letter	Sent despite notice 1 and notice 2	
			-	

Chase also moves to strike fourth cause of action in its entirety on that grounds that it is immaterial under Fed. R. Civ. P. 12(f), to the extent that it based alleged violations of the Federal FDCPA, or to the extent that it relies on the billing statements for violations of the Rosenthal FDCPA.

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declaratory relief."

Finally, Chase moves to strike as follows plaintiff's prayer for \$515,480.00 in punitive				
damages on the grounds that it is immaterial under Fed. R. Civ. P. 12(f) because plaintiff has				
failed to state a claim for which punitive damages are available:				
Complaint, paragraph 2: "ESCAMILLA seeks actual economic and non-				
economic damages, attorney fees, costs, injunctive relief, punitive damages, and				

Complaint, page 12: "WHEREFORE, ESCAMILLA having set forth the claims for relief against CHASE, respectfully prays that this Court grant relief in the amount of \$595,028.00 monetary damages (\$51,548.00 Actual Damages, \$28,000.00 Penalties, \$515,480 Punitive Damages), Attorney Fees and Costs According to Proof, Injunctive Relief, and Declaratory Relief."

Complaint, page 13, E: "Punitive damages of \$514,480.00 equal to 10 times the forgoing Actual Damages for Invasion of Privacy, Right to Seclusion, and Tort in Se;"

This motion is based on the attached memorandum of points and authorities and such other papers and pleadings as are on file herein.

Dated: September 5, 2008 Respectfully submitted,

ROPERS, MAJESKI, KOHN & BENTLEY

By:/s/ Wendy C. Krog GEORGE G. WEICKHARDT WENDY C. KROG Attorneys for Defendants CHASE BANK USA, N.A.

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